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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. | | | | |
|--|--------------------|----------------------|---|------------------|---------------|------------|-----------------|--|
| 10/757,215 | 01/14/2004 | Bernhard Dehmer | 860-011643-US(PAR)/200301 | 4868 | | | | |
| 2512 PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824 | 7590 07/06/2007 | | <table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">GORDON, BRIAN R</td></tr></table> | | EXAMINER | | GORDON, BRIAN R | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/757,215 | DEHMER, BERNHARD | |
| | Examiner | Art Unit | |
| | Brian R. Gordon | 1743 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1-14-04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed January 14, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

As to claim 1 it is unclear how the term "inclined" further limits the flap. Does inclined refer a surface of the flap being sloped or slanted or is the term directed to the arrangement or position of the flap. Furthermore such incline is mentioned in respect to an unclaimed liquid channel. It is unclear if applicant intends for the liquid channel be an element of the septum. Is the channel an element of a separate device? Furthermore there is no indication as what is the longitudinal axis. Is it vertical,

horizontal, slanted? Term longitudinal is directed to the dimension in which the device extends the furthest. Furthermore there is no indication as to which direction the flap is inclined with respect to such axis.

For the purpose of examination, it appears the hinged septum is attached to a container having a liquid channel 25 and the hinge of the septum allows for the flap of the septum to open inwardly (inclined) into the liquid channel and subsequently return to a closed position as well.

Claim 2 recites the limitation "the contour". There is insufficient antecedent basis for this limitation in the claim.

Claim 3 is not further limiting for it is unclear what one considers well-defined or finishing conditions. There is no further structure claimed as for providing such conditions.

Claim 5 recites the limitation "the sealed state". There is insufficient antecedent basis for this limitation in the claim.

Claim 7 is not further structurally limiting. It is only required the flap have surface. While the claim refers to such surface as "contacting and drainage", the terms are directed to the intended purpose or use of such surface.

The term "narrow" in claim 10 is relative. There is no numerical value or means of comparison provided as to determine what one considers narrow.

As to claims 13-14, which the claim recites the hinge "may be fixed to a tubing section", the tubing section is not positively claimed as an element of the apparatus. The device is mentioned in terms of intended use.

As to claim 15, it is unclear what the pronoun "its" references and where the gasket is located. Is the gasket (claims 15 and 17) an element of the septum, deposition device, or unclaimed liquid channel.

The term "thin" in claim 17 is relative. There is no numerical value or means of comparison provided as to determine what one considers thin.

Claims 18-19 appear to describe or give a narrative of how the device is intended to be used with the unclaimed tubing section and deposition device.

Claim 20 recites the limitation "the rim". There is insufficient antecedent basis for this limitation in the claim.

The term "vicinity" in claim 21 is relative. There is no numerical value or means of comparison provided as to determine what one considers vicinity. How close or far away from such axis does one consider in the vicinity?

As to claims 22-23, there is no antecedent basis for "the foil". What does one consider a "great deal less"? There is no basis of "its rim". As previously stated the liquid channel is not positively claim the liquid channel. There is no basis for the term "the sealing surface"

As to claim 24, there is no basis for "the foil" or "the elastic hinge".

As to claims 25 and 28, there is no basis for "the contacting and drainage surface"

Claim 31 is a duplicate claim to that of 1, the only difference in the claims are the preambles. The elements which define the inventions are the same. One the claims must be canceled.

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As to claim 32 it is unclear what one considers well-defined or finishing conditions.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 5-19, 22-25, and 31-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Chang et al. US 2003/0052074.

Chang et al. discloses the invention as claimed. See abstract, Figure 12, and [paragraph 0035].

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. Claims 4 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al. US 2003/0052074.

Chang et al. does not disclose the wall or flap 36 as being manufactured from a foil material.

However, Chang et al. discloses suitable materials for forming the cover 52 include, but are not limited to, thin metallic foils (e.g., aluminum foil).

It would have been obvious to one of ordinary skill in the art at the time of the invention to recognize the wall 36 may be manufactured from the same type of materials.

Chang et al. discloses the claimed invention except for the ellipse It would have been an obvious matter of design choice to change the shape of the opening and wall, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ehrenkranz; Joel R. L.; Smith, James C.; Bass, Leland L.; Richardson; Derrick A. et al.; Kidd; Geoffrey; Samsoondar; James; Otto; Ralf et al.; Luotola; Juhani et al.; Kuchar; Michael A.; Cholewa; Olivia M.; Hanley; Kathleen A. et al.; Perlman; Daniel; Anderson; Bruce W. et al.; Levy; Abner; Levy; Abner; Buonaiuto;

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Val et al.; Eberle; Gunter; Gabrlík; Zdenek et al.; Morrissey, Gloria et al.; Kitagawa; Nobuhiro; Deflander; Joseph F.; and Dushman; Lawrence M. disclose various container cap combinations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, Telework Thurs., 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Brian R Gordon
Primary Examiner
Art Unit 1743

brg

BRIAN R. GORDON
PRIMARY EXAMINER